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7 ***Insurance Company***

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 RANDY ROHDE,

11 Plaintiff,

Case No: 2:17-cv-00620- GMN-NJK

12 vs.

13 PROGRESSIVE DIRECT INSURANCE
14 COMPANY; DOES I through X, inclusive,
ROE CORPORATIONS I through X,
15 inclusive,

16 Defendants.

17 **STIPULATION AND ORDER REGARDING CONFIDENTIALITY AGREEMENT**

18 PLAINTIFF, RANDY ROHDE, by and through his counsel of record, Julie A. Mersch,
19 Esq., of the LAW OFFICE OF JULIE A MERSCH; and DEFENDANT, PROGRESSIVE DIRECT
20 INSURANCE COMPANY (hereinafter "PROGRESSIVE INSURANCE"), by and through its
21 counsel of record, Ryan L. Dennett, Esq. of the law firm of DENNETT WINSPEAR, LLP, hereby
22 enter into the following STIPULATION AND ORDER REGARDING CONFIDENTIALITY
23 AGREEMENT:

24 WHEREAS PLAINTIFF has filed the above-identified suit against DEFENDANT,
25 PROGRESSIVE INSURANCE;

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1 WHEREAS PROGRESSIVE INSURANCE was served with Plaintiff's request for
2 production of documents at the LR-26 Meet and Confer Meeting and anticipates that
3 PROGRESSIVE INSURANCE may be served with additional requests for documents in
4 connection with the instant suit;

5 WHEREAS PROGRESSIVE INSURANCE has asserted a privilege and will continue to
6 assert a privilege, that the materials to be disclosed and sought by PLAINTIFF are of a
7 confidential or proprietary nature and constitute a trade secret under applicable law, and will
8 assert such a privilege from disclosure of documents and discovery as to any current and future
9 requests for production of documents;

10 WHEREAS PLAINTIFF and DEFENDANT PROGRESSIVE INSURANCE desire to
11 expedite and facilitate the discovery process in this litigation while protecting the business
12 interests of PROGRESSIVE INSURANCE to its trade secrets; and

13 WHEREAS PLAINTIFF and DEFENDANT PROGRESSIVE INSURANCE agree that the
14 easiest and most economical way to accomplish this goal is through the execution of this
15 STIPULATION AND ORDER REGARDING CONFIDENTIALITY AGREEMENT.

16 IT IS THEREFORE AGREED as follows:

17 1. Documents that will be produced by PROGRESSIVE INSURANCE and
18 designated as "Confidential" as provided pursuant to this STIPULATION AND ORDER
19 REGARDING CONFIDENTIALITY AGREEMENT are claimed by PROGRESSIVE INSURANCE
20 to be of a confidential or proprietary nature by PROGRESSIVE INSURANCE at or about the time
21 of the incident or transactions at issue in this litigation or at some time later. The purpose of this
22 STIPULATION AND ORDER REGARDING CONFIDENTIALITY AGREEMENT is to protect the
23 confidentiality of these documents.

24 2. Documents and information produced in this case by PROGRESSIVE
25 INSURANCE shall be protected from inappropriate disclosure in accordance with the following
26 terms and conditions:

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1 a. PROGRESSIVE INSURANCE may, in good faith, designate documents or
2 discovery information “confidential” including, but not limited to:

3 i. All documents and/or information that Defendant believes to constitute or
4 disclose trade secrets or other confidential research, development, testing, or commercial
5 information or other information that it is entitled to keep in confidence;

6 ii. Business marketing, testing, training materials, research or strategic plans
7 relating to any materials, products, goods and/or services;

8 iii. Discovery material reflecting or relating to research, testing or financial
9 data; and/or

10 iv. All documents and/or information containing or referring to internal
11 evaluations and/or criticisms of any of PROGRESSIVE INSURANCE products, goods, services,
12 practices and/or procedures, as well as any claims handling materials for claims brought against
13 PROGRESSIVE INSURANCE.

14 b. All documents produced by PROGRESSIVE INSURANCE in this case and
15 designated “confidential” shall be used solely for the purpose of “this action” and shall not be
16 made available to persons other than “qualified persons” as defined in Paragraph 3. “This
17 action” specifically refers to the pretrial proceedings and trial or settlement of the above-
18 referenced cause of action, and no other.

19 3. “Qualified persons” means:

20 a. A party to this action, an officer, director, employee or partner or a party of in-
21 house counsel having direct responsibility for, working directly on, or testifying in connection with
22 this action who has executed a Declaration in the form attached hereto as Exhibit A the executed
23 Exhibit A shall be delivered to counsel for PROGRESSIVE INSURANCE; and/or

24 b. Counsel of record for the parties and the legal assistants and regularly employed
25 office staff of the counsel of record for the parties; and/or

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1 c. A person retained by a party or its attorneys of record to assist in this action, such
2 as independent accountants, expert witnesses, statisticians, economists, consultants or other
3 technical experts and/or consultants, who have signed a Declaration in the form of Exhibit A
4 hereto. Delivery of the executed Exhibit A must be provided to counsel for PROGRESSIVE
5 INSURANCE at the time an expert report is provided, expert disclosures are due or at the
6 conclusion of this case, whichever comes first; and/or

7 d. Court reporters, persons operating video recording equipment at depositions, and
8 any Special Master appointed by the Court; and/or

9 e. Actual or potential deposition witnesses in this action who are assisting counsel in
10 the prosecution or defense of this action or whom counsel must advise concerning the status of
11 this action who have executed a Declaration in the form attached hereto as Exhibit A.

12 4. Unless prior written consent for further disclosure has been obtained from counsel
13 for PROGRESSIVE INSURANCE or permission for such disclosure has been given by the Court,
14 each qualified person identified in Paragraphs 3(a), (c), and (e) above, as well as counsel for
15 third-party witnesses, to whom delivery, exhibition or disclosure of any materials designed as
16 confidential is made, shall be provided with a copy of this STIPULATION AND ORDER
17 REGARDING CONFIDENTIALITY AGREEMENT.

18 5. "Confidential" documents and other discovery materials shall include all originals
19 and copies of any document and/or information that PROGRESSIVE INSURANCE has
20 designated as such by stamping the cover or other page or by stamping a blank sheet affixed to
21 the cover or other page with the word "CONFIDENTIAL" or in any other reasonable manner
22 appropriate to the form in which the confidential information is made available to the qualified
23 persons as defined in Paragraph 3. In lieu of stamping the originals of documents,
24 PROGRESSIVE INSURANCE may stamp copies that are produced or exchanged, or indicate in
25 some appropriate fashion that the documents are confidential under this STIPULATION AND
26 ORDER REGARDING CONFIDENTIALITY AGREEMENT. Notwithstanding the foregoing,
27 documents or other discovery materials produced and not so designated through mistake, an
28 inadvertence, or for any other reason shall likewise be deemed confidential if later designated.

1 6. In the event that a “qualified person” ceases to engage in the preparation for trial
2 or trial of this proceeding, access by such person to confidential documents and other discovery
3 materials of PROGRESSIVE INSURANCE shall be terminated. However, the provisions of this
4 STIPULATION AND ORDER REGARDING CONFIDENTIALITY AGREEMENT shall remain in
5 full force and effect as to all persons who have obtained access to such documents or other
6 discovery materials of PROGRESSIVE INSURANCE designated for protection hereunder in
7 perpetuity.

8 7. Counsel for the parties shall maintain a list of the names of all persons, including
9 all experts, expected to testify at trial, who inspect or view confidential documents and other
10 discovery information or who receive any copies of such confidential documents or discovery
11 information and shall make such a list available to PROGRESSIVE INSURANCE at the
12 conclusion of this litigation.

13 8. This STIPULATION AND ORDER REGARDING CONFIDENTIALITY
14 AGREEMENT initially protects from disclosure all documents that the producing party designates
15 in good faith as "confidential". Upon delivery of any document or other information so
16 designated, another party may, within 20 days of delivery of the document or other information,
17 send a letter to the producing party challenging any such designations by indicating by bates
18 number ranges or other sufficient identifying information precisely which documents the
19 challenging party asserts are not in fact "confidential". The parties shall confer in good faith in an
20 attempt to informally resolve the dispute. If such attempt is unsuccessful, the party asserting the
21 “confidential” designation of the document(s), shall file a motion for a protective order regarding
22 any designations in question, enclosing, where appropriate, the documents challenged for in
23 camera review. The opposing party shall oppose the Motion per FRCP. Movant shall apply, if
24 necessary, and submit the motion. Upon stipulation approved by the court, the parties may
25 expedite briefing. The documents challenged hereunder retain their status as "confidential
26 information" hereunder unless or until the court order that they be released from such status.

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1 9. Documents initially designated as "confidential" by either party are solely to be
2 used within the confines of this litigation.

3 10. Nothing contained herein shall prevent disclosure beyond the terms of this
4 STIPULATION AND ORDER REGARDING CONFIDENTIALITY AGREEMENT if
5 PROGRESSIVE INSURANCE consents in writing to such disclosure; or if the Court allows such
6 disclosure; or if the party to whom confidential information has been produced thereafter
7 becomes obligated to disclose the information in response to a lawful subpoena, PROVIDED
8 THAT the subpoenaed party gives prompt written notice to counsel for PROGRESSIVE
9 INSURANCE and permits PROGRESSIVE INSURANCE's counsel sufficient time to intervene
10 and seek appropriate relief in the action in which the subpoena was issued.

11 11. Nothing in this STIPULATION AND ORDER REGARDING CONFIDENTIALITY
12 AGREEMENT, nor any action taken in compliance with it, shall:

13 a. Operate as an admission by PROGRESSIVE INSURANCE that any particular
14 document, or discovery material, deposition transcript, or discovery response is or is not
15 confidential; or

16 b. Prejudice in any way the right of any party to seek a determination by the Court
17 whether particular documents or other information should or should not be disclosed or if
18 disclosed whether it should remain subject to the terms of this STIPULATION AND ORDER
19 REGARDING CONFIDENTIALITY AGREEMENT.

20 Any party may request the Court to modify or otherwise grant relief from any provision of
21 this STIPULATION AND ORDER REGARDING CONFIDENTIALITY AGREEMENT.

22 12. Nothing in this STIPULATION AND ORDER REGARDING CONFIDENTIALITY
23 AGREEMENT shall be deemed to impair PROGRESSIVE INSURANCE's right to object to the
24 production of documents or information on any ground, or to assert that the documents or
25 information sought are privileged or otherwise protected from disclosure or to demand more
26 stringent restrictions for the treatment or disclosure of any documents or discovery information
27 on any ground that may be warranted by the circumstances of a particular document request.

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1 13. Nothing in this STIPULATION AND ORDER REGARDING CONFIDENTIALITY
2 AGREEMENT shall bar or otherwise restrict any attorney herein from rendering advice to his or
3 her client with respect to this case.

4 14. The parties and their attorneys, and any “qualified persons” who receive
5 confidential information subject to this STIPULATION AND ORDER REGARDING
6 CONFIDENTIALITY AGREEMENT, who intentionally, knowingly, or otherwise violate the terms
7 of this STIPULATION AND ORDER REGARDING CONFIDENTIALITY AGREEMENT shall be
8 jointly and severally liable to PROGRESSIVE INSURANCE for all damages arising therefrom
9 and PROGRESSIVE INSURANCE may pursue any and all civil remedies available to it for
10 breach of the terms of this STIPULATION AND ORDER REGARDING CONFIDENTIALITY
11 AGREEMENT.

12 15. This STIPULATION AND ORDER REGARDING CONFIDENTIALITY
13 AGREEMENT may be modified by executing a revised stipulation and order among all parties,
14 approved by the Court or by application by noticed motion.

15 16. Nothing in this STIPULATION AND ORDER REGARDING CONFIDENTIALITY
16 AGREEMENT shall be construed as a waiver of any rights by any party with respect to matters
17 not specifically provided for herein.

18 17. Unless otherwise permitted by statute, rule or prior court order, papers filed with
19 the court under seal shall be accompanied by a contemporaneous motion for leave to file those
20 documents under seal, and shall be filed consistent with the court’s electronic filing procedures in
21 accordance with Local Rule 10-5(b). Notwithstanding any agreement among the parties, the
22 party seeking to file a paper under seal bears the burden of overcoming the presumption in favor
23 of public access to papers filed in court. *Kamakana v. City and County of Honolulu*, 447 F.2d
24 1172 (9th Cir. 2006).

25 18. Nothing in this STIPULATION AND ORDER REGARDING CONFIDENTIALITY
26 AGREEMENT shall be construed to subject the Court or its staff to civil liability for any disclosure
27 of confidential information ~~if contrary to the terms of this stipulated protective order~~. Neither shall
28 this STIPULATION AND ORDER REGARDING CONFIDENTIALITY AGREEMENT be construed

1 to interrupt or affect the Court's duties to apply Ninth Circuit standards to unseal materials as
2 appropriate, even though those materials may be been designated as confidential pursuant to
3 this stipulated protective order.

4 DATED: 8/25/2017

DATED: 8/25/2017

5 **LAW OFFICES OF JULIE A. MERSCH**

DENNETT WINSPEAR, LLP

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7 By /s/ Julie A. Mersch
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11 ***RANDY ROHDE***

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Attorneys for Defendant, PROGRESSIVE
DIRECT INSURANCE COMPANY

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16 **ORDER**

17 Good cause appearing therefore, IT IS SO ORDERED.

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19 DATED August 30, 2017, 2017.

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22 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO
ABIDE BY STIPULATION AND ORDER
REGARDING CONFIDENTIALITY AGREEMENT

THE UNDERSIGNED HEREBY UNDERSTANDS AND ACKNOWLEDGES that he or she has read the Stipulation and Order Regarding Confidentiality Agreement filed in this action on _____, 2017. The Undersigned hereby acknowledges that a Stipulation and Order Regarding Confidentiality Agreement in the case of *RANDY ROHDE v PROGRESSIVE DIRECT INSURANCE COMPANY, et al.*, was filed in the United States District Court Southern District for the District of Nevada and entitled "STIPULATION AND ORDER REGARDING CONFIDENTIALITY AGREEMENT."

The Undersigned agrees to be bound by the terms of the above-mentioned Stipulation and Order Regarding Confidentiality Agreement in the same manner as the parties to the Stipulation and Order and their respective attorneys. The Undersigned agrees to provide Ryan L. Dennett, Esq., attorney for Defendant PROGRESSIVE INSURANCE, with written notice of any document sharing as well as a list of any recipients of shared documents. The Undersigned also agrees, as provided in the Stipulation and Order Regarding Confidentiality Agreement, to submit to the jurisdiction of the United States District Court Southern District for the District of Nevada for any proceedings related to any violation or threatened violation of this Order.

Dated: _____

Litigant

Litigant

Litigant

Attorney